

*a***CEMPAKA PROPERTIES SDN BHD****v.****SIA MOI CHOO***b*

HIGH COURT MALAYA, KUANTAN

MOHAMED APANDI ALI J

[CIVIL APPEAL NO: 12-81-2004]

18 APRIL 2005

c

CIVIL PROCEDURE: *Execution - Writ of seizure and sale - Writ set aside - Order staying execution of judgment still valid - Setting aside order of stay not appraised by registrar at time writ was issued - Whether appraisal required before issuance of writ - Rules of the High Court 1980, O. 42 r. 7 - Subordinate Court Rules 1980, O. 31 r. 4*

d

CIVIL PROCEDURE: *Judgments and orders - Order setting aside stay - Order not appraised by registrar at time writ of seizure and sale issued - Whether stay order still valid and subsisting - Rules of the High Court 1980, O. 42 r. 7 - Subordinate Court Rules 1980, O. 31 r. 4*

e

LEGAL PROFESSION: *Practice and etiquette - Deception - Counsel challenged validity of order setting aside stay on grounds order not appraised before issue of writ of seizure and sale - Whether amounted to deception practiced on court - Legal Profession (Practice and Etiquette) Rules 1980, rr. 17, 31*

f

The judgment creditor ('JC') obtained a monetary judgment ('the judgment') against the judgment debtor ('JD'), and on an application by the JD the sessions judge granted a stay of execution of the judgment ('stay order'). The JC then appealed against the stay order and this court allowed the appeal and set aside the stay order ('the setting aside order'). Accordingly, the registrar of the Sessions Court issued a writ of seizure and sale to execute the judgment.

g

The JD then applied to set aside the said writ on the ground that the stay order was still valid as the setting aside order was not appraised by the registrar at the time the said writ was issued. The sessions judge allowed the said application. Hence, this appeal by the JC.

*h**i*

Held (allowing the appeal):

[1] Order 42 r. 7 Rules of the High Court 1980 ('RHC') applies to all judgments and orders regardless of whether the same is pronounced, given or made in court or chambers or by a judge or registrar. The effective date of this court's decision in setting aside the stay order was the date it was given. Once the stay order was set aside, it followed that the JC was at liberty to request for the issuance of a writ of seizure and sale pursuant to O. 31 r. 4 Subordinate Court Rules 1980. In light of the provision of O. 42 r. 7 RHC, the stay order did not exist anymore after it was set aside on appeal to this court. The question of appraising the setting aside order did not arise. Even if there was a necessity for the registrar to appraise the setting aside order before issuing the writ of seizure and sale, such appraisal was sufficiently covered by the facts given and acknowledged by counsel for both parties. (pp 547 b-h & 548 a)

[2] It could not be denied that at all material times the setting aside order was within the personal knowledge of counsel for the JD. Counsel for the JD during the appeal that resulted in the setting aside order and in the subsequent proceedings to set aside the writ of seizure and sale was the very same counsel. Therefore, he had personal knowledge of the setting aside order and yet had the audacity to shut out that knowledge and submit that the stay order still remained valid, effective and subsisting. There was therefore a breach of rr. 17 and 31 Legal Profession (Practice and Etiquette) Rules 1978. It followed that it was reasonable, fair and prudent to place the parties back at the *status quo* when the stay order was set aside by this court earlier. (pp 548 b-g & 549 a)

Case(s) referred to:

Holtiby v. Hodgson [1890] 24 QBD 105 (*refd*)

Tatchee Machinery Agency v. Posan Timber Trading Sdn Bhd [1989] 1 MLJ 388 (*refd*)

Legislation referred to:

Legal Profession Act 1976, s. 77

Legal Profession (Practice And Etiquette) Rules 1978, rr. 17, 31

Rules of the High Court 1980, O. 42 r. 7

Subordinate Courts Rules 1980, O. 31 r. 4

For the appellant - Thangaraj Balasundram; M/s Thangaraj & Co

For the respondent - Chan Guey Fa; M/s Chan Guey Fa & Co

Reported by Usha Thiagarajah

*a***JUDGMENT****Mohamed Apandi Ali J:**

b This is an appeal by the judgment creditor (Cempaka properties Sdn. Bhd.) against the decision of the learned Sessions Court Judge, given on 30 July 2004 whereby the Sessions Court allowed the judgment debtor's application to set aside the writ of seizure and sale dated 1 June 2004 issued by the registrar of the Sessions Court.

Background Of Appeal

c To fully appreciate the facts and issues relating to this appeal, it is best to state the chronological events prior to and leading to this appeal. The relevant events are as follows:

- d* 1. On 19 December 2003, after a full trial, at the Sessions Court, the judgment creditor obtained a monetary judgment against the judgment debtor, namely for rentals due to the judgment creditor since 15 August 2001.
2. On 25 February 2004, on application by the judgment debtor (Sia Moi Choo), the Sessions Court granted a stay of the execution of the judgment (dated 19 December 2003).
- e* 3. On 26 May 2004, on appeal by the judgment creditor, against the stay order given on 25 February 2004, this court allowed the appeal and set aside the said stay order (dated 25 February 2004).
- f* 4. On 1 June 2004 the registrar of the Sessions Court issued a writ of seizure and sale to execute the judgment earlier obtained on 19 December 2003 against the judgment debtor.
- g* 5. On 30 July 2004, the learned Sessions Court Judge, allowed an application by the judgment debtor to set-aside the writ of seizure and sale, on the grounds that his stay order dated 25 February 2004 was still valid because the High Court Order setting aside the said stay order given on 26 May 2004 was not appraised by the registrar at the time the writ of seizure and sale was issued.

The Issues Before The Court

h Basically the issue is when does an order of the High Court take effect? To expand it further, in the context of this appeal, the additional issues are:

- i* 1. Does a subordinate Court Order still remain valid, until and unless, a sealed copy of the High Court Order reversing the said subordinate court's order is filed for appraisal?

2. Can a counsel, who has full knowledge of the High Court Order, that reversed the earlier stay order of a subordinate court, proceed to challenge the validity of the High Court Order, particularly in the issuance of a writ of execution, on the sole reason that a sealed copy of the High Court Order has not been filed? **a**

The Law And Court's Decision **b**

Order 42 r. 7 of the Rules of the High Court 1980, reads as follows:

- (1) A judgment or order of the Court takes effect from the day of its date.
- (2) Such a judgment or order shall be dated as of the day on which it is pronounced, given or made, unless the Court orders it to be dated as of some other earlier or later day, in which case it shall be dated as of that other day. **c**

It is to be noted that this rule, applies to all judgments and orders, regardless of whether the same is pronounced, given or made in court or chambers, or by a judge or registrar. This statement of law can be seen in the cases of: **d**

- (1) *Tatchee Machinery Agency v. Posan Timber Trading Sdn. Bhd.* [1989] 1 MLJ 388; and
- (2) *Holtby v. Hodgson* [1890] 24 QBD 105. **e**

However, to my mind, if the legal provision is clear, as in this case, as to the effective date of a judgment, there is no real necessity to refer to case law for guidance. As the rule stands, it is crystal clear that the effective date of my decision in setting aside the stay order of the Sessions Court Judge, in respect of the execution of the writ of seizure and sale, is the date the decision was given, ie, on 26 May 2004. Once the stay order is set aside, it follows, therefore, that the judgment creditor is at liberty to request for the issuance of a writ of seizure and sale, pursuant to O. 31 r. 4 of the Subordinate Courts Rules 1980. It is my finding and conclusion that in the light of the provision of O. 42 r. 7 of the Rules of the High Court 1980, the earlier stay order by the learned Sessions Court judge, does not exist anymore, after it is set aside, on appeal, on 26 May 2004. The question of appraisal by the registrar of the Subordinate Court of the setting aside order does not arise. **f**

Procedural rules, namely the Rules of the High Court 1980 and the Subordinate Courts Rule 1980 are meant to be adhered to, for practical and pragmatic purposes, to meet the ends of justice. The rules are not substantive laws that can be dissected and interpreted for purposes of legal arguments. The legal concept of *void abnito*, is not applicable in the circumstances of this case. **g**

i

a Even if there is the necessity for the registrar to appraise the setting aside order before issuing the writ of seizure and sale, such appraisal is sufficiently covered by the facts given and acknowledged by counsel for both litigating parties.

b Here, it cannot be denied that, at all material times the setting aside order, dated 26 May 2004, is within the personal knowledge of the learned counsel for the judgment debtor. From the records of proceedings and cause papers filed therein, it is noted that the counsel who acted for the judgment debtor during the appeal that resulted in the setting aside order and in the subsequent proceedings to set aside the new writ of seizure and sale, before the Sessions Court Judge, on 30 July 2004, is the very same counsel. He had personal knowledge of the earlier setting-aside order of 26 May 2004 and yet he has the audacity to shut out that knowledge and submit that the previous stay order by the Sessions Court still remained valid, effective and subsisting. This is a deception of the highest order!

d This act of the learned counsel for the judgment debtor reminded me of certain laws that governed the legal profession, namely r. 17 and r. 31 of the Legal Profession (Practice And Etiquette) Rules 1978. Even though these are rules made by the Bar Council, such rules have a force of law as they are subsidiary legislation. The said rules are made pursuant to the powers given under s. 77 of the Legal Profession Act 1976 and were published and gazetted as PU(A) 369/78.

Rule 17 of the Legal Profession (Practice And Etiquette) Rules 1978, reads as follows:

f Rule 17 No deception on court

An advocate and solicitor shall not practise any deception on the court.

and r. 31 of the said Rules, reads as follows:

g Rule 31 Advocate and solicitor to uphold dignity of profession

Every advocate and solicitor shall at all times uphold the dignity and high standing of his profession.

h I find that, with regret, the learned counsel for the judgment debtor in the course of the proceedings, breached the abovesaid Rules.

i

From the factual matrices of the case, namely the chronological order of events that took place, I conclude that it is reasonable, fair and prudent to place the parties back to the *status quo* when the stay order of the execution of writ of seizure and sales, was set aside by this court on 26 May 2004. Wherefore, the appeal by the judgment creditor is allowed with cost.

a

b

c

d

e

f

g

h

i